

1 Brett L. Gibbs, Esq. (SBN 251000)  
Of Counsel to Prenda Law Inc.  
2 38 Miller Avenue, #263  
Mill Valley, CA 94941  
3 415-325-5900  
blgibbs@wefightpiracy.com

4 *Attorney for Plaintiff*

5  
6 IN THE UNITED STATES DISTRICT COURT FOR THE  
7 CENTRAL DISTRICT OF CALIFORNIA  
8

9 INGENUITY13 LLC,  
10 Plaintiff,

11 v.

12 JOHN DOE,

13 Defendant.  
14

No. 2:12-cv-06662-ODW-JC

**PLAINTIFF'S RESPONSE TO ORDER TO  
SHOW CAUSE RE LACK OF SERVICE**

15 **PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE RE LACK OF SERVICE**

16 On December 20, 2012, this Court issued its Order to Show Cause Re Lack of Service  
17 in this case. (ECF No. 12). In that order, the Court pointed out that under the Federal Rule of  
18 Civil Procedure 4(m), "defendant must be served within 120 days after the complaint is filed,  
19 or else the Court 'must dismiss the action without prejudice.'" (*Id.*) Further, the Court  
20 ordered that Plaintiff "has 7 days to comply with this order, or if Defendant have [sic] been  
21 served, Plaintiff has 7 days to file the proof of service." (*Id.*) The Supreme Court, however,  
22 has unambiguously held that "the 120-day provision operates not as an outer limit subject to  
23 reduction, but as an irreducible allowance."<sup>1</sup> The Supreme Court also noted that "courts  
24 have been accorded discretion to enlarge the 120-day period even if there is no good cause  
25 shown."<sup>2</sup> Plaintiff nevertheless responds as follows. Plaintiff's delay in complying with the  
26 irreducible allowance of FRCP 4(m) was caused by the fact that Plaintiff was attempting to  
27

28 <sup>1</sup> *Henderson v. United States*, 517 US 654, 661 (1996).

<sup>2</sup> *Id.* (Internal citations omitted).

1 contact the subscriber regarding the allegations of copyright infringement. Though the  
2 subscriber, David Wagar, remained silent, Plaintiff's investigation of his household  
3 established that Benjamin Wagar was the likely infringer of Plaintiff's copyright. As such,  
4 Plaintiff mailed its Amended Complaint to the Court naming Benjamin Wagar as the  
5 Defendant in this action.

6  
7 Respectfully Submitted,

8 **DATED: December 27, 2012**

9 By: /s/ Brett L. Gibbs

10  
11 Brett L. Gibbs, Esq. (SBN 251000)  
12 Of Counsel to Prenda Law Inc.  
13 38 Miller Avenue, #263  
14 Mill Valley, CA 94941  
15 blgibbs@wefightpiracy.com  
16 *Attorney for Plaintiff*  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28